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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/852,445 | 05/09/2001 | Daniel P. Topp | TOPP-P2-US | 5131 |

21616 7590 11/05/2002

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EXAMINER

FERKO, KATHRYN P

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3743

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

GN

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/852,445 | TOPP, DANIEL P. | |
| | Examiner | Art Unit | |
| | Kathryn Ferko | 3743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 19-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This is a response to the amendment filed September 3, 2002. Claims 1-11 and 19-26 are pending.

Response to Arguments

1. Applicant's arguments filed September 3, 2002 have been fully considered but they are not persuasive. It is unclear as to how the Rhind reference does not disclose each and every element of independent claims 1 and 20 of the invention. The first conical section of Rhind does have a diameter proximate the diameter of the burner and a smaller diameter distal end, as seen in figure 2. Lines 74-102 discuss the convergence of the first conical frustum. Furthermore, Rhind discloses a diverging second conical frustum (9). Therefore, since it is not a limitation of the claim to have a single converging conical frustum, the prior art demonstrates the limitations as claimed. Taken at its broadest, Rhind does disclose a circularly shaped burner tube having a plurality of gas exit holes (5), wherein the burner tube includes the chamber (4). Therefore, given the broad nature of the claim, the additional features of Rhind read over the limitations as claimed.

2. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., gas that is variably adjusted, horizontal or vertical orientation, portability, etc.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-11 and 19-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhind.

Rhind discloses a combustion system for use in a gas burning heater having a circularly-shaped burner tube (3a) with a plurality of gas exit holes (5) on one side and means (1) for feeding a controlled amount of gas thereto, as recited in lines 33-54; a burner with a set diameter; a first conical frusta section having a pre-determined first pattern of orifice ports with a basal end having a diameter proximate the diameter of the burner tube and a smaller diameter distal end, the basal end of the first conical frusta section being attached to the burner tube at a position radially inward from the gas exit holes, as recited in lines 74-89, and seen in figures 1 and 2; a second conical frusta section (9) having a pre-determined second pattern of orifice ports having a basal end and a larger diameter distal end where the basal end of the second conical frusta section has a diameter proximate the diameter of the burner tube and is attached to the burner tube at a position radially outward from the gas exit holes, as seen in

figures 1 and 2. Element 9 connects to the burner at 5a and has a larger diameter distal end. Further Rhind discloses a first conical frustum section having a pre-determined first pattern of orifice ports, as seen in figure 2 and a first conical frustum section having a basal end having a diameter proximate the diameter of the burner tube where the basal end of the first conical frustum section is attached to the burner tube proximate the plurality of gas exit holes at a position radially inward from the gas exit holes, as seen in figure 2. Given the broad nature of the word "proximate," it can be considered that the frustum section is attached proximate to the plurality of gas exit holes. Rhind also discloses a first conical frustum section having a converging profile as the distance away from the burner tube increases, as recited in lines 74-102; a second conical frustum section with a pre-determined second pattern of orifice ports; and a second conical frustum section with a basal end having a diameter proximate the diameter of the burner tube where the basal end of the second conical frustum section is attached to the burner tube proximate the plurality of gas exit holes at a position radially outward from the gas exit holes, as seen in figure 2. Again, given the broad nature of the term "proximate" and the considering the burner tube of Rhind as described above. Additionally, Rhind also discloses a second conical frustum with a diverging profile and first and second frusta section communicating with the burner for mixing the appropriate amount of air to the volume of gas, as recited with the phrases, "The lengths of the air/gas mixing frusta conical sections or flanges are determined by the

desired heat output of the combustion system," "Generally speaking, the length of this conical frusta system or flange increases proportionally in relation to the BTU output of the heater."

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Ferko whose telephone number is (703) 306-3454. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (703) 308-0101. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

KF
October 21, 2002



Henry Bennett
Supervisory Patent Examiner
Group 5700